

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

AMERICAN RESIDENTIAL SERVICES,  
LLC, a Delaware Corporation,

Plaintiff,

vs.

COLIN MARTODAM, an individual,  
GREENSTAR HOME SERVICES, INC., a  
California Corporation, GREENSTAR  
HOME SERVICES OF NEVADA, INC., a  
Nevada Corporation,

Defendant.

Case No. 2:14-cv-00516-APG-GWF

ORDER GRANTING

**STIPULATED FINAL JUDGMENT AND  
PERMANENT INJUNCTION**

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

This matter comes before the Court on Plaintiff AMERICAN RESIDENTIAL SERVICES, L.L.C.'s (hereinafter "ARS" or "Plaintiff") Complaint and Motion for Preliminary Injunction on Order Shortening Time against Defendants COLIN MARTODAM (hereinafter "MARTODAM"), GREENSTAR HOME SERVICES, INC. and GREENSTAR HOME SERVICES OF NEVADA, INC. (hereinafter collectively referred to as "GREENSTAR"), collectively referred to as Defendants, where appropriate.

1 On April 9, 2014, Plaintiff American Residential Service, LLC ("ARS") applied to this Court  
 2 *ex parte* for a preliminary injunction on order shortening time. The Court entered an Order [Dkt.  
 3 #13] setting forth the expedited briefing schedule and scheduling a hearing on Plaintiff's motion for  
 4 preliminary injunction for Monday, April 14, 2014. Prior to the hearing, the parties informed the  
 5 Court of the pending resolution of this action, to be effectuated in part pursuant to the terms of a  
 6 Stipulated Permanent Injunction. The resolution of this action between the parties is contingent  
 7 upon entry by the Court of this Final Judgment and Permanent Injunction.

8 ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS  
 9 FOLLOWS:

10 1. For a period of two (2) years from the date of execution of this Stipulated Final  
 11 Judgment and Permanent Injunction, Defendants Colin Martodam ("Martodam"), Greenstar Home  
 12 Services, Inc. and Greenstar Home Services of Nevada, Inc. (collectively "Greenstar") are enjoined  
 13 from: (a) soliciting, entering into any business relationship with, or entering into any implied or  
 14 express agreement with, The Home Depot; (b) directly soliciting any ARS customer or potential  
 15 customer identified on ARS' Alliance list, which is a list of customers and potential customers in  
 16 Southern California that ARS acquired and developed through an asset purchase from a  
 17 homebuilder/construction company called "Alliance"; and (c) directly soliciting any ARS customer  
 18 identified as presently having a Home Service Plan ("HSP") with ARS.

19 2. ARS shall run a computer-generated report of active HSP customers with their last  
 20 service date and will provide it to Winston & Strawn LLP for attorneys' eyes only review. Greenstar  
 21 shall provide its customer list to ARS' outside counsel at Winston & Strawn LLP for attorneys' eyes  
 22 only review. Winston & Strawn LLP, or a vendor retained by Winston & Strawn LLP who has  
 23 executed a non-disclosure and confidentiality agreement, shall cross reference ARS' Alliance list  
 24 and list of active HSP customers who have received an ARS service in the prior 24 months, and will  
 25 flag those customers who appear on either list and on Greenstar's customer list. Once those flagged  
 26 customers are identified to Greenstar by Winston & Strawn), those customers will be specially  
 27 marked in Greenstar's electronic databases so as to not receive any direct solicitation of any kind,  
 28

1 including email, mail, or phone calls. Greenstar's customer list shall be provided to Winston &  
2 Strawn LLP no later than 5:00 p.m. on April 28, 2014.

3 3. Greenstar's current third-party marketing service, ViaDirect and/or Ashley White,  
4 shall not send any Greenstar mailers to HSP or Alliance customers. ARS on the one hand, and  
5 ViaDirect and Ashley White on the other, will enter into a non-disclosure agreement, after which,  
6 ARS will provide Ashley White with the list of HSP and Alliance customers. Martodam and  
7 Greenstar agree that ViaDirect and Ashley White will cross-reference and remove all Alliance and  
8 HSP customers from any and all mailers or marketing pieces ViaDirect and/or Ashley White  
9 disseminate on behalf of Greenstar. If Greenstar decides to use a different vendor other than  
10 ViaDirect and/or Ashley White in the two-year period contemplated by this provision, that vendor  
11 must enter into a non-disclosure agreement with ARS similar to that identified herein, to ensure  
12 compliance with this section. Martodam and Greenstar agree that any vendor who does not enter  
13 into such an agreement shall not be allowed to market on their behalf, including sending mailers or  
14 making calls to customers or potential customers. For any vendor that does enter into a non-  
15 disclosure agreement, ARS will provide the vendor with the list of HSP and Alliance customers.  
16 Martodam and Greenstar agree that the vendor will cross-reference and remove all Alliance and HSP  
17 customers from any and all mailers or marketing pieces that the vendor disseminates on behalf of  
18 Greenstar. The afore-mentioned procedures shall be without waiver by ARS that the customer  
19 identities and contact information are protectable as a trade secret and/or confidential information.

20 4. The Court shall retain jurisdiction to enforce this Final Judgment and Permanent  
21 Injunction.

22 5. Within 7 days of the date of execution of this Stipulated Final Judgment and  
23 Permanent Injunction, Martodam and Greenstar will identify all information, documentation, and/or  
24 data taken from ARS, including, but not limited to, the thumb drive(s) on which Martodam  
25 downloaded material from his ARS-issued laptop, including any and all ARS information on their  
26 personal or business computers.

27 a. This includes, but is not limited to, the following folders and files:

- 28 • "ARS Files";

- 1 • "ARS 2012 Pricing Pages";
- 2 • "ARS Files\Pricing";
- 3 • "Tracker" or "Trackers";
- 4 • "URGENT REMINDER – Exceptional Service HVAC & Plumbing
- 5 Guarantee Changes";
- 6 • "Alliance ML for IE";
- 7 • "Favorites";
- 8 • "ARS Files FINAL";
- 9 • "Passwords";
- 10 • "SD Other Stuff";
- 11 • "Job Folder Process";
- 12 • "INVENTMENT CONSIDERATIONS.docx"
- 13 • "H.D\Operations\Customer Care"

14 b. This also includes, but is not limited to, any of the following ARS information  
 15 alleged to be Trade Secrets:

- 16 • Pricing information for ARS' customers;
- 17 • Cost information for ARS;
- 18 • Particularized, non-public information about the individualized needs,
- 19 requirements, and past experience or practices of particular customers;
- 20 • Specific contract information and unique contractual terms and conditions for
- 21 ARS's customers;
- 22 • Information about the history of contract negotiations with customers, trade-
- 23 offs and concessions made in such negotiations, and the interrelationships
- 24 between different but related contracts (such as a sale contract and a service
- 25 contract);
- 26 • Customer and customer prospect lists and databases, including but not limited
- 27 to:
- 28 ○ Specific information about persons within customer organizations and
- information about their responsibilities and direct contact information
- (such as cell phone numbers and email addresses);
- Past sales and service data;
- Customer concerns and complaints;

- Additional business opportunities and prospects;
- Current and past customers' service needs and preferences;
- The type of equipment and installation/maintenance history for current, past, or potential customers;
- Any customer data purchased or by ARS as a result from Alliance or any other construction company or homebuilder;
- Dates of scheduled strategic meetings and the purpose and subject matters of such meetings and presentations prepared in connection with such meetings;
- Information relating to ARS' profit margin, labor capacity, performance history, and products;
- Information relating to sales and strategy techniques and forecasting;
- Information relating to advertising performance, including information relating to dollars spent, response rates, conversion rates, booking rates, cancellation rates, and the ultimate return in dollars by piece;
- Information from the following ARS systems, programs, software and/or databases:
  - Daily Strategic Compass ("DSC");
  - Profit Planner;
  - Daily Flash;
  - SuccessWare;
  - Call Tracker.

6. Within 2 days of completing their duties set forth in Paragraph 5, Martodam and Greenstar shall provide screen shots of searches performed on their personal and/or business computers showing file paths before any such file paths are deleted or destroyed.

7. Within 5 days of completing their duties set forth in Paragraphs 5 and 6, Martodam and Greenstar shall return by Federal Express Overnight Delivery to ARS all information, documentation, and/or data identified in Paragraph 6 that is in their possession, custody or control and will not retain any copies thereof.

8. Within 30 days from the date of execution of this Stipulated Final Judgment and Permanent Injunction, Martodam and Greenstar shall give to ARS complete disclosures as to how they used the information taken from ARS and to whom they disclosed, shared, or told about it.

1 Martodam, Jeremy Prevost, and Jeff Ballard agree to sit for a deposition at any time during the 6  
2 month period following disclosure on this subject, if requested by ARS. Greenstar shall also present  
3 a "person most qualified" to sit for deposition regarding topics related to Martodam and Greenstar's  
4 efforts to comply with paragraphs 6 through 8 of this Stipulated Final Judgment and Permanent  
5 Injunction.

6 9. Within 14 days from the date of execution of this Stipulated Final Judgment and  
7 Permanent Injunction, Martodam and Greenstar shall provide ARS with all correspondences  
8 (electronic, paper or otherwise) that they have had with The Home Depot since November 2013.  
9 Martodam need not provide correspondence between himself and The Home Depot that by its  
10 express nature was made on behalf of ARS while Martodam was employed by ARS, unless such  
11 correspondence included Confidential Information and/or Trade Secret information as defined in  
12 Martodam's February 8, 2013 Non-Disclosure/Non-Interference Agreement.

13 10. ARS shall retain the right to forensically audit Martodam's and/or Greenstar's  
14 computer systems once per quarter for a one (1) year period. The forensic examination shall include  
15 the imaging and search of computers, email, and other electronic storage equipment for its files.  
16 ARS will identify at least two but not more than three vendors to Greenstar who ARS may use to  
17 conduct the forensic audit, and Greenstar agrees to select at least one of the three vendors within 5  
18 days of being provided the list, who shall conduct the audit(s).

19 11. Martodam and Greenstar shall represent in writing that all disclosures they make  
20 pursuant to Paragraphs 6 through 8 of this Agreement are complete and that there was no other  
21 misappropriation of Trade Secrets or any other use of confidential information from ARS.

22 12. In the event of the discovery of retention by Martodam or Greenstar of ARS  
23 confidential or trade secret information, or of further misappropriation of trade secret or confidential  
24 information not disclosed or returned by Martodam and Greenstar, as agreed Paragraphs 5 through 9  
25 of this Agreement, Martodam and Greenstar will be jointly and severally liable for liquidated  
26 damages in the amount of \$200,000 for each act of misappropriation.

1           13.     Within 14 days from the date of execution of this Stipulated Final Judgment and  
2 Permanent Injunction, Greenstar shall provide to ARS a copy of each direct mailer it has used in the  
3 last year.

4           14.     Martodam and Greenstar agree that for a period of two (2) years from the date of  
5 entry of this Final Judgment and Permanent Injunction, they shall not solicit any ARS employee to  
6 enter into any relationships with Martodam, Greenstar, or any competing business, or otherwise  
7 induce or attempt to induce such employees to terminate their employment with ARS. In the event  
8 that Martodam and/or Greenstar, or anyone acting on their behalf, breaches this obligation not to  
9 solicit ARS employees and not to induce or attempt to induce such employees to terminate their  
10 employment with ARS, Martodam and Greenstar shall be jointly and severally liable for liquidated  
11 damages in the amount of \$200,000 for each instance where ARS can prove such solicitation,  
12 inducement or attempted inducement.

13           15.     The Parties shall not take any action, or direct, encourage, or assist any person in  
14 taking action, to disparage, interfere with, or lessen the value of ARS' or Greenstar's trade secrets,  
15 confidential information, or business. This obligation of non-disparagement will bind Martodam,  
16 managers, directors, owners and/or officers of Greenstar, and managers, directors, owners and/or  
17 officers of ARS. The Parties will agree that managers of Greenstar and ARS shall make good faith  
18 efforts to inform their respective front-line employees that they should not make any disparaging  
19 statements to any customers or other members of the public about the other organization.

20           16.     The Parties agrees that the Court will administratively close this matter based on this  
21 stipulated judgment and permanent injunction. If there is a dispute over a violation of the terms of  
22 the permanent injunction, the parties may petition the Court to reopen the action in order to resolve  
23 such dispute.

24                               THIS SPACE LEFT INTENTIONALLY BLANK

25                               SIGNATURES ON THE NEXT PAGE

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27     ///

28     ///

1 DATED: April 30, 2014

WINSTON & STRAWN LLP

2 By: [Signature]  
3 Amanda C. Sommerfeld, Esq.  
4 Attorneys for American Residential Services, LLC

5 DATED: April \_\_, 2014

LITTLER MENDELSON

6 By: \_\_\_\_\_  
7 Bruce C. Young, Esq.,  
8 Attorneys for American Residential Services, LLC

9 DATED: April 29, 2014

COLIN MARTODAM

11 DATED: April 29, 2014

GREENSTAR HOME SERVICES, INC.

12 By: [Signature]  
13 Its: [Signature]

15 DATED: April 29, 2014

GREENSTAR HOME SERVICES OF NEVADA, INC.

16 By: [Signature]  
17 Its: [Signature]

19 DATED: April \_\_, 2014

MARQUIS AURBACH COFFING

20 By: \_\_\_\_\_  
21 FRANK M. FLANSBURG, ESQ.  
22 Attorneys for American Residential Services, LLC

23 IT IS SO ORDERED

24 Dated this \_\_\_\_ day of \_\_\_\_\_, 2014.

26 UNITED STATES DISTRICT JUDGE

28 Firmwide: 126371062.2 063509.1028



1 DATED: May \_\_, 2014

WINSTON & STRAWN LLP

2 By: \_\_\_\_\_  
3 Amanda C. Sommerfeld, Esq.  
4 Attorneys for American Residential Services, LLC

5 DATED: May 1, 2014

LITTLER MENDELSON

6 By: \_\_\_\_\_  
7 Bruce C. Young, Esq.,  
8 Attorneys for American Residential Services, LLC

9 DATED: May \_\_, 2014

COLIN MARTODAM

11 DATED: May \_\_, 2014

GREENSTAR HOME SERVICES, INC.

12 By: \_\_\_\_\_  
13 Its: \_\_\_\_\_

15 DATED: May \_\_, 2014

GREENSTAR HOME SERVICES OF NEVADA, INC.

16 By: \_\_\_\_\_  
17 Its: \_\_\_\_\_

18 DATED: May \_\_, 2014

MARQUIS AURBACH COFFING

19 By: \_\_\_\_\_  
20 FRANK M. FLANSBURG, ESQ.  
21 Attorneys for Defendants Martodam, Greenstar Home  
22 Services, Inc. and Greenstar Home Services of Nevada,  
23 Inc.

24 **IT IS SO ORDERED**

25 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

26 \_\_\_\_\_  
27 UNITED STATES DISTRICT JUDGE

28 Firmwide:126371062.2 063509.1028

1 DATED: April \_\_, 2014

WINSTON & STRAWN LLP

2 By: \_\_\_\_\_  
3 Amanda C. Sommerfeld, Esq.  
4 Attorneys for American Residential Services, LLC

5 DATED: April \_\_, 2014

LITTLER MENDELSON

6 By: \_\_\_\_\_  
7 Bruce C. Young, Esq.,  
8 Attorneys for American Residential Services, LLC

9 DATED: April \_\_, 2014

COLIN MARTODAM

11 DATED: April \_\_, 2014

GREENSTAR HOME SERVICES, INC.

12 By: \_\_\_\_\_  
13 Its: \_\_\_\_\_

15 DATED: April \_\_, 2014

GREENSTAR HOME SERVICES OF NEVADA, INC.

16 By: \_\_\_\_\_  
17 Its: \_\_\_\_\_

19 DATED: May 5, 2014

MARQUIS AURBACH COFFING

20 By: \_\_\_\_\_  
21 FRANK M. FLANSBURG, ESQ.  
22 Attorneys for Defendants Colin Martodam, Greenstar  
23 Home Services, Inc., and Greenstar Home Services of  
24 Nevada, Inc.

25 **IT IS SO ORDERED**

26 Dated this 6th day of May, 2014.

27   
28 \_\_\_\_\_  
UNITED STATES DISTRICT JUDGE